

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

<b>UNITED STATES OF AMERICA,</b>	)	
	)	
<b>Plaintiff,</b>	)	<b>8:04CR502</b>
	)	
<b>vs.</b>	)	<b>REPORT AND</b>
	)	
<b>JOHNNY L. GARDNER,</b>	)	<b>RECOMMENDATION</b>
	)	
<b>Defendant.</b>	)	

On March 23, 2005, defendant Johnny L. Gardner (Gardner), together with his counsel, James R. Kozel, appeared before the undersigned magistrate judge. Gardner was advised of the charges, the penalties and the right to appear before a United States District Judge. After orally consenting to proceed before a magistrate judge, Gardner entered a plea of guilty to Count I of the Indictment.

After being sworn, Gardner was orally examined by the undersigned magistrate judge in open court as required by Federal Rule of Criminal Procedure 11. Gardner also was given the advice required by that Rule. Finally, Gardner was given a full opportunity to address the court and ask questions.

Counsel for the government and counsel for Gardner were given the opportunity to suggest additional questions by the court. Moreover, both counsel orally certified that they were of the opinion that the plea was knowing, intelligent and voluntary, and that there was a factual basis for Gardner's plea of guilty to Count I of the Indictment.

Therefore, I find and conclude that: (1) the plea of Guilty to Count I of the Indictment is knowing, intelligent, and voluntary; (2) there is a factual basis for the plea; (3) the provisions of Rule 11 and any other provisions of the law governing the submission of guilty pleas have been complied with; (4) a petition to enter a plea of guilty, on a form approved by the court, was completed by Gardner, Gardner's counsel and counsel for the government, and was placed in the court file (Filing No. 23); (5) the plea agreement is in writing and is filed in the court file (Filing No. 24); (6) there were no agreements or stipulations other than those contained in the written plea agreement.

**IT IS RECOMMENDED TO JUDGE THOMAS M. SHANAHAN that:**

1. He accept the guilty plea and find the defendant, Johnny L. Gardner guilty of the crime set forth in Count I of the Indictment to which Gardner tendered a guilty plea;
2. He accept the written plea agreement attached to the petition to enter a plea of guilty with the understanding that the court is not bound by the stipulations, but may with the aid of the presentence report, determine the facts relevant to sentencing.

**ADMONITION**

Pursuant to NECrimR 57.3 any objection to this Report and Recommendation shall be filed with the Clerk of the Court within ten (10) days after being served with a copy of this Report and Recommendation. Failure to timely object may constitute a waiver of any such objection. The brief in support of any objection shall be filed at the time of filing such objection. Failure to submit a brief in support of any objection may be deemed an abandonment of the objection.

DATED this 23rd day of March, 2005.

BY THE COURT:

s/Thomas D. Thalken  
United States Magistrate Judge